

United States District Court
Eastern District of California

Anthony Higbee,

Petitioner,

vs.

Mike Knowles, et al.,

Respondents.

No. Civ. S 04-1820 DFL PAN P

Order

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December 21, 2004, respondents filed and served an answer to the petition. August 8, 2005, respondents moved to file a supplemental answer to assert an additional defense in light of Sass v. California Board of Prison Terms, 376 F.Supp.2d 975 (E. D. Cal. 2005).

A supplemental pleading is the mechanism by which a party alleges "transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Fed. R. Civ. P. 15(c). Since respondents seek to plead an additional defense, the court construes the request as

1 one to amend the answer pursuant to Fed. R. Civ. P. 15(a).

2 Pursuant to Fed. R. Civ. P. 15(a),

3 A party may amend the party's pleading once as a matter
4 of course at any time before a responsive pleading is
5 served or, if the pleading is one to which no
6 responsive pleading is permitted and the action has not
7 been placed upon the trial calendar, the party may so
8 amend it at any time within 20 days after it is served.
9 Otherwise a party may amend the party's pleading only
10 by leave of court or by written consent of the adverse
11 party; and leave shall be freely given when justice so
12 requires.

13 More than 20 days have passed since respondents answered the
14 petition and petitioner opposes the request to amend. But
15 respondents seek to amend based on a recent development in the
16 law and nothing suggests the motion is made in bad faith or
17 solely to delay resolution of this action.

18 Accordingly, respondents' August 8, 2005, request is granted
19 and the Clerk of the Court shall file the attached amended
20 answer.

21 So ordered.

22 Dated: November 29, 2005.

23 /s/ Peter A. Nowinski
24 PETER A. NOWINSKI
25 Magistrate Judge
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